IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 8549 of 2002

Between:

G. Karunakar, s/o. Yadhagiri,
R/o. 1-6-141/28/6, Sriramnagar Area,
Suryapet, Nalgonda District.

..... PETITIONER

AND

1 Government of Andhra Pradesh, Rep.by its Addl. Secretary,
Deptt. of Revenue (Registration & Mandals), Secretariat,
Hyderabad.
2 Commissioner & Inspector General of Registration & Stamps,
Andhra Pradesh, Hyderabad.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction or writ specially writ of mandamus declaring the action of the respondents in not issuing the certificate of practice as required under rule 8(4) of Notaries Rules, 1956 as highly illegal, arbitrary and consequently direct the respondents to issue certificate of practice to the petitioner in pursuance of 1st Respondent's Memo No.36737/R&M.1/2000-3 dt.19-6-2001 as required under rule 8(4) of Notaries Rules, 1956 and pass

Counsel for the Petitioner: MR.M.VENKAT RAM REDDY

Counsel for the Respondent Nos. 1 & 2: GP FOR REVENUE

The Court made the following:

Oral order:-

This writ petition is filed to direct the respondents to issue certificate of practice to the petitioner as required under Rule 8 (4) of Notaries Rules, 1956 (for short 'the Rules') pursuant to the Memo No. 36737/R&M.1/2000-3 dated 19-06-2001 of the1st respondent.

The case of the petitioner is that he submitted to the 2nd respondent an application in the prescribed form enclosing the requisite certificates for appointment as Notary. The application was processed and the 1st respondent issued a memo dated 19-06-2001 and that he has been appointed as Notary in respect of Sreeramnagar area of Suryapet town. In pursuance of the Government Memo, the 2nd respondent asked the petitioner to pay requisite fee of Rs.1,000-00, which has been paid on 26-07-2001.

The Central Government, in exercise of powers conferred under Section 15 of the Notaries Act, 1952 (for short 'the Act'), framed Notary Rules, 1956. Rule 8 (4) of the Rules postulates where an application for notary is allowed, the appropriate government shall appoint the applicant as Notary and direct his name to be entered in the Register of Notaries maintained by the Government under Section 4 of the Act and to issue him a certificate of appointment on payment of prescribed fee authorizing him to practice in the area to which the applicant relates to. The name of the petitioner is also published in the Gazette dated 15-03-2001 and the remaining part of action to be taken is only to issue certificate. It is stated that once the application is allowed by the 1st respondent, there is no other alternative except to issue certificate by entering the name of the applicant in the register as prescribed in Section 4 of the Act.

The complaint of the petitioner is that though his application has been allowed by the government and in spite of paying the prescribed fee, the action of

the respondents in not issuing the certificate as required under Rule 8 (4) of the Rules is illegal. Hence the writ petition.

The respondents filed the counter stating *inter alia* that the Central Government issued notification amending the Rules and was published in the Gazette of India dated 09-05-2001 giving effect of the amendment to come into force from 09-05-2001. On amendment to Rules, Sub-rule (4-A) has been inserted after Sub-rule (4) of Rule 8 of the Rules, which reads as under:

> Rule 4-A. The appropriate Government, may, on and after the ninth day of May, 2001 appoint Notaries in a State or Union Territory, as the case may be, not exceeding number of Notaries appointed for the purpose of counting the total number of notaries specified in the Schedule.
>
> Provided that the number of notaries whose certificate of practice has been renewed under sub-section (2) of Section 5 of the Act shall be included in the total number of Notaries appointed for the purpose of counting the total number of notaries specified in the schedule:
>
> Provided further that if in a State or Union Territory the number of notaries appointed before the ninth day of May, 2001 exceeds the number of notaries specified in the Schedule, such notaries shall be continued to be so appointed in that State or Union Territory, as the case may be.

A Schedule has been inserted after Rule 13. As seen from the Schedule the maximum number of notaries to be appointed by the State Government of Andhra Pradesh is fixed at 575, whereas the State Government have already appointed 1256 notaries and thus the number fixed has been exceeded. However, the appointments already made in excess are saved under the second proviso in Sub-Rule (4-A). The Central Government in its D.O. letter dated 18-05-2001 clarified that further appointments will stand barred, if the existing appointments already exceeded the quota. The Government of Andhra Pradesh in its memo dated 13-11-2001 took a policy decision not to entertain recommendations for the fresh appointments of Notaries besides refunding the fee paid by the notaries who could not be issued Certificate of Practice against their applications pending at various stages. It is stated that in view of the fixation of the strength of notaries by the Central Government through amendment inserting Rule 4-A with effect from 09-05-2001 and restricted the strength of Notaries in the State as 575, the application of the petitioner could not be complied with.

In view of the amendments to the Rules and restriction imposed in respect of the

strength of notaries in the State of Andhra Pradesh at 575, the relief sought by the petitioner in this writ petition cannot be granted. More over the Supreme Court in *Rathi Menon Vs. Union of India* (), which has been cited and relied on by a Full Bench of this Court in *Union of India, S.C.R. vs. K. Balakrishnaiah* (), held that *'…If a person files a suit the amount of compensation would depend upon what the court considers just and reasonable on the date of determination. Therefore, even when he comes before the tribunal claiming compensation, the determination of the amount should be as on the date of such determination*.'

The respondents, as on the date of amendment of Rule, have not issued the notary certificate in favour of the petitioner. By virtue of amendment to rule and the consequential policy decision of the State Government restricting the number of notaries to be issued in the State of Andhra Pradesh, notary certificate, though all formalities have been completed, has not been issued. In view of the principle laid down by the Supreme Court and followed by a Full Bench of this Court, and the State Government has taken a policy decision restricting the number of notarites to be issued in the State of Andhra Pradesh, the petitioner is not entitled to get the relief sought for.

For the reasons stated above, I see no reason to interfere with the matter. There are no merits in the writ petition. It is accordingly, dismissed. No order as to costs.

ELIPE DHARMA RAO, J

Dt. 14-07-2004

Pvks/*

To

1. The Additional Secretary,
   Department of Revenue (Registration & Mandals), Government of Andhra

Pradesh, Secretariat, Hyderabad.
2. The Commissioner & Inspector General of Registration & Stamps,
   Andhra Pradesh, Hyderabad.

3. 2 CCs., to the learned Government Pleader for Revenue, A.P. High Court Buildings, Hyderabad (OUT).

4. 2 CD copies

*Form-NIC-OGS/WP{**BDLNM**}*